



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080015

Petitioner, 299 Harvard Street Trust, applied to the Building Commissioner for permission to increase seating for the existing Panera Bread restaurant at 299 Harvard Street from 125 to a total of 167 seats per plans. The application was denied and an appeal was taken to this Board.

On May 1, 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed June 12, 2008, at 7:00 p.m. in the Main Library on the second floor as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published May 22, 2008 and May 29, 2008, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: 299 HARVARD STREET TRUST
Location of Premises: **299 HARVARD ST. BRKL**
Date of Hearing: 06/12/2008
Time of Hearing: 7:00 p.m.
Place of Hearing: **Main Library, 2nd Floor**

A public hearing will be held for a variance and/or a special permit from

1. **6.02, Paragraph 1; Table of Off-Street Parking Space Requirements; Variance Required.**
2. **8.02.2; Alteration or Extension; Variance Required.**
3. **Board of Appeals Decision; Case No. 060073; dated January 30, 2007; Modification Required**

Of the Zoning By-Law to increase the seating of the existing Panera Bread restaurant from 125 to a total of 167 seats per plans

at **299 HARVARD ST. BRKL**

Said Premise located in a G-1.75 (CC) District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the **ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.***

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At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chairman, Robert DeVries and Board Members, Jonathan Book and Mark Allen. The petitioner was represented at the hearing by Attorney Jeffrey P. Allen.

At the hearing, Lara Curtis, Planner, distributed the Planning Board Report dated May 15, 2008.

299 Harvard Street is an attached, single-story brick building located mid-block between Green and Babcock Streets in the heart of Coolidge Corner. Constructed in 1928, the building originally featured a brick exterior with a cast stone façade. The storefront was remodeled in 1963 and again in 1983. Most recently, Panera Bread made various alterations to the storefront, including installation of outdoor seating in front of a recessed entryway. The building has been utilized by retail and restaurant uses in the past. The surrounding neighborhood is characterized by commercial uses similar in scale to the applicant's

The Petitioner proposed to increase the seating for the existing Panera Bread restaurant by 42 seats from 125 to 167. Currently, the restaurant has indoor seating for 105 persons and outdoor seating for 20 persons. The restaurant will increase the seating by adding and reconfiguring the tables and chairs both inside the restaurant and on the patio area. There are no onsite parking spaces, as the building occupies the entire lot.

Mr. Allen reviewed the zoning relief necessary for this project to go forward. The zoning relief required is as follows:

Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
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Parking Spaces (1 space per 5 seats)	8 more	0	0	Variance*
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* In Case No. 060073 (2007), the Petitioner sought and was granted a special permit under Section 6.02.1.b to waive six (6) parking spaces, and a variance for an additional four (4) parking spaces. Therefore, the Special Permit waiver is no longer available, and a variance would be required.

Section 8.02.2 – Alteration or Extension: Special permit required to alter or enlarge a non-conforming condition.

Board of Appeals Case #060073, January 30, 2007: This case granted variance and special permit relief from parking requirements to increase seating at the restaurant. *Modification required.*

Mr. Allen explained that the Panera Bread restaurant at 299 Harvard Street is extremely popular, and as a result of its tremendous success at the location, the existing seating is simply not adequate to accommodate the restaurant's customers. With regard to the requested variance, Mr. Allen stated that literal compliance with the parking requirements under the By-Law is not feasible in light of the existing conditions at the lot in question. In particular, Mr. Allen stated that as a result of the unique character of the lot and existing structure which prohibits the placement of any onsite parking at the site, failure to grant the requested variance would cause substantial hardship to the Petitioner by preventing the Petitioner from fully utilizing the property. Mr. Allen explained that the requested variance was particularly appropriate under the circumstances of this petition, and stressed that the Board had previously granted the Petitioner a variance to allow an increase in restaurant seating in Board of Appeals case # 060073. The Petitioner is not altering its existing business; but rather, it is simply requesting the relief needed to add additional seating to accommodate its customers. While the Board expressed some

concern regarding the number of additional seats being requested, Mr. Allen stated that the Petitioner had agreed to limit the total occupancy to 159 seats, comprised of 131 interior seats, and 28 exterior patio seats.

The Chairperson asked if any members of the public wished to be heard. Several people, including Ms. Marge Amster representing the Brookline Merchant's Association and Attorney Damon Seligson of Holland and Knight 10 St. James Avenue, Boston, MA. representing Finagle a Bagel, a similar business at Coolidge Corner, spoke against the proposal.

Lara Curtis, Town Planner, gave the report on behalf of the Planning Department. Ms. Curtis said that the Planning Board is not opposed to this proposal to increase the seating capacity of the restaurant, provided the restaurant meets all safety and handicap accessible requirements for the building. The restaurant is extremely popular, and the need for additional seating is clear. The restaurant is located close to public transit in a pedestrian-oriented environment, and it is in close proximity to a number of public parking lots and on-street metered parking spaces. The Petitioner cannot provide parking onsite due to the lot's size and the placement of the building on the lot and the building has never had parking spaces for its customers or employees. As there is no onsite parking available at this location, and to encourage the use of public transportation for employees, the management should provide partially subsidized T-passes to all restaurant employees, which was a condition that was also attached to the previous Board of Appeals decision. Conformance with this previous requirement should be ascertained. Additionally, the Petitioner's original renovation of the storefront façade indicated fabric awnings; the awnings that were installed are vinyl and should either be replaced appropriately or come

back to the Planning Board for approval. Finally, all conditions that were previously attached to the Board of Appeals decision to originally increase the restaurant's seating should remain in place and are repeated here. Therefore, should the Board of Appeals find that the statutory requirements for a variance have been met, the Planning Board recommended approval of the requested relief per plans drawn by Cubelis, and dated April 14, 2008, subject to the following conditions:

1. **The restaurant's management shall implement an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant's employees.**
2. **The color and style of exterior tables, chairs, and umbrella, if used, and the type of plants, pots, and waste container shall be subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to obtaining a building permit, the Petitioner shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final floor plan showing dimensions stamped and signed by a registered architect or land surveyor as provided already, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**
4. **Before a Certificate of Occupancy, the Building Department and the Fire Department shall certify that handicap accessibility and fire safety codes have been met.**

Michael Shepard, Building Commissioner, spoke on behalf of the Building Department. He restated the various sections of the Zoning By-law under which relief is needed. Mr. Shepard stated that the Building Department has no objections to the requested relief. He further stated that he will ensure that all State Code provisions are satisfied.

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this Petitioner, with

occupancy limited to 131 interior seats and 28 exterior seats, for a total of 159 seats, subject to certain conditions.

The Board considered the visual relationships of site and proposed alterations to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed increase in restaurant seating and parking relief will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to Sections 5.09 and 9.5:

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed increase in restaurant and seasonal outdoor seating.
2. The use as proposed by the Petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

5. The proposed increase in restaurant seating will not have a significant adverse affect on the supply of housing available for low and moderate income people.

In regard to the requested variance, the Board finds that the literal compliance with the requirements of the By-Law is not feasible in light of the existing conditions at the lot in question. As a result of the lot conditions and the unique shape of the existing building, failure to grant the requested variances would cause substantial hardship to the property owner. Granting the requested variance to dispense with the eight (8) additional parking spaces associated with the proposed additional restaurant seating will not be detrimental to the public good nor nullify or substantially derogate from the intent or purpose of the Brookline Zoning By-Law.

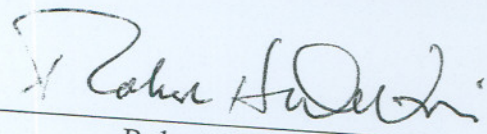
Accordingly, the Board grants a variance from Sections 6.02. and 8.02.2 to dispense with the parking requirements for the eight (8) additional parking spaces associated with the increased restaurant seating. The foregoing grants are all zoning relief requested to increase the seating for the restaurant, but with occupancy limited to 131 interior seats and 28 exterior seats for a total occupancy of 159 seats, and are granted subject to the following conditions:

1. **The restaurant's management shall make available an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant's employees. Evidence of such program shall be submitted to the Assistant Director for Regulatory Planning prior to the issuance of a building permit and annually, thereafter.**
2. **The color and style of exterior tables, chairs, and umbrellas, if used, and the type of plants, pots, and waste container shall be subject to the review and approval of the Assistant Director of Regulatory Planning.**

3. The petitioner shall submit to the Building Department an affidavit, stamped and signed by a Massachusetts registered architect that the proposed seating arrangement meets or exceeds the minimum requirements of the Architectural Access Board as well as the Americans with Disabilities Act.
4. Prior to obtaining a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final floor plan showing dimensions stamped and signed by a registered architect or land surveyor, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
5. Any façade changes shall be reviewed and approved by the Planning Board prior to the issuance of a building permit for these changes.


Unanimous Decision of
the Board of Appeals

Filing Date: July 18, 2008


Robert DeVries

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals